

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF PUERTO RICO

IN RE:

SUDGEILY ENID REYES NIEVES

DEBTOR

FIRSTBANK PUERTO RICO

RESPONDENT

CASE NO.: 12-08832(BKT)

CHAPTER 13

***OBJECTION TO CONFIRMATION OF PLAN DATED NOVEMBER 1, 2012, AND  
REQUEST FOR DISMISSAL***

TO THE HONORABLE COURT:

COMES NOW, Movant, **FIRSTBANK PUERTO RICO**, through its undersigned attorney and very respectfully states and prays:

**I. PROCEDURAL BACKGROUND**

1. On August 31, 2012, Debtor filed the instant petition for relief under Chapter 13 of the Bankruptcy Code. *See, Docket 1.*

2. Movant's standing is ascertained as it filed a secured lien claim for the amount of \$18,993.63, by virtue of duly registered conditional sales contract regarding a **2011 Toyota Yaris**. At the time of the petition, debtor owed 8 months of pre-petition arrears for the amount of \$3,015.60. *See, Claim No. 1-2.*

3. The Chapter 13 plan dated **November 1, 2012**, which is still waiting for confirmation, proposes to pay **\$92.00 x 56; \$451.00 x 4 months, plus \$400.00 of tax refunds**; for the total base of **\$7,356.00**, through the Chapter 13 Trustee. The plan also provided to pay FirstBank's secured arrears through the Chapter 13 Trustee and for Debtor to maintain regular payments directly to FirstBank Puerto Rico. *See Docket 7.*

4. Debtor, as of **January 3, 2013**, has the following direct installments owed to FirstBank Puerto Rico:

<u>Pre-Petition</u>	<u>Amount in Arrears</u>	<u>Post-Petition</u>	<u>Amount in Arrears</u>
8	\$3,015.60	2	\$753.00

Objection to Confirmation and Request for Dismissal  
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*See, Attachment A.*

5. In view of the fact that debtor has incurred in arrears with post-petition direct payments owed to FirstBank, it is FirstBank's position that debtor has not met the feasibility test required under Section 1325(a)(6). Therefore, FirstBank objects to the confirmation of debtor's Plan Dated November 1, 2012, and pursuant 11 U.S.C. 1307(c) respectfully requests the Entry of Order dismissing the case.

## **II. APPLICABLE LAW**

### ***(a) FEASIBILITY TEST***

A Chapter 13 plan can be confirmed only if it meets the standards of Section 1325 of the Bankruptcy Code. The court is required to confirm a Chapter 13 plan only if: (1) the plan complies with the rest of Chapter 13 and the Bankruptcy Code; (2) the debtor has paid the necessary filing fee and any other fees imposed on Chapter 13 debtors; (3) the debtor's petition and the plan itself has been proposed in good faith and not by any means otherwise forbidden by law; (4) the plan is in the best interest of creditors and it pays them at least what they would have received had the debtor liquidated under Chapter 7; (5) it provides for secured creditors to receive at least the value of the collateral; (6) the plan is financially feasible; (7) the debtor is current on his support obligations; and (8) the debtor has filed any required Federal, State, and local income tax returns.

Section 1325(a)(6) on feasibility requires that "the debtor will be able to make all payments under the plan and to comply with the plan." Thus, it must be feasible for the debtor to perform the plan according to its terms. If the debtor lacks sufficient income to fund the plan and to meet both his or her living expenses and those of his or her dependents, the plan cannot be confirmed. Thus, if the plan does not meet this standard, confirmation may be denied.

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Feasibility is a factual determination and the bankruptcy court's decision will not be disturbed absent a firm conviction that clear error has been committed. Fed. R. Bankr.P. 8013; 2 Keith M. Lundin, *Chapter 13 Bankruptcy* § 5.56 (2d ed.1994); see 8 Lawrence P. King et al., *Collier on Bankruptcy*, ¶ 1325-07 (15th ed.1997) ("[b]y far the most important criterion for the confirmation of a chapter 13 plan in terms of promoting the success of chapter 13 proceedings is subsection 1325(a)(6)'s requirement that the court determine whether the chapter 13 debtor will be able to make all payments under the plan and comply with all other provisions . . . ").

To satisfy feasibility, a debtor's plan must have a reasonable likelihood of success, i.e., that it is likely that the debtor will have the necessary resources to make all payments as directed by the plan. 11 U.S.C. § 1325(a)(6); *In re Brunson*, 87 B.R. 304, 312 (Bankr.D.N.J. 1988). The debtor carries the initial burden of showing that the plan is feasible. *In re Felberman*, 196 B.R. 678, 685 (Bankr. S.D.N.Y.1995); *In re Endicott*, 157 B.R. 255, 263 (W.D.Va.1993). Before confirmation, the bankruptcy court should be satisfied that the debtor has the present as well as the future financial capacity to comply with the terms of the plan. *In re Crotty*, 11 B.R. 507, 511 (Bankr.N.D.Tex.1981) (a definite declaration as to the source and amount of funds necessary to enable debtors to make payments under the plan is required). See, *In re Fantasia*, 211 B.R. 411 (BAP 1<sup>st</sup> Cir. 1997).

Thus, the schedules property and budget figures must show sufficient income or other financial resources to enable the debtor to make the payments proposed. If the debtor does not present such evidence as is necessary to convince the court that payments can be made, the plan may be found not feasible. *In re Nance*, 4 B.R. 50 (Bankr. W.D. Mo. 1980). Similarly, if the plan calls for a very large lump sum payment at the end of

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the plan, with no explanation of how the debtor will fund it, the plan will be found not to meet the feasibility test. *In re Fantasia*, 211 B.R. 420 (BAP 1<sup>st</sup> Cir. 1997).

***(b) REQUEST FOR DISMISSAL UNDER §1307(c)***

In view of the aforesaid, dismissal of the instant case is proper within the frame of Title 11 USC §1307 (c) of the Bankruptcy Code, which provides:

- (c) Except as provided in subsection (e) of this section, on request of a party in interest or the United States Trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including-
  - (1) **Unreasonable delay by debtor that is prejudicial to creditors;**
  - (2) ....
  - (3) ....
  - (4) **Failure to commence making timely payments under section 1321 of this title;**
  - (5) ...
  - (6) **Material default by the debtor with respect to a term of a confirmed plan;**

“In seeking bankruptcy relief under chapter 13 of the Bankruptcy Code, the Debtor undertook the obligation to take reasonable, appropriate steps to move the case along the path toward confirmation of a chapter 13”. *See In re Jackson*, 2007 WL 1188202, Bkrcty.E.D.Pa (2007).

The general principles that guide whether a case should be dismissed for ‘Unreasonable delay’ were articulated by the Court in *In re Wile*, 310 B.R. 514, as cited in *In re Jackson*, 2007 WL 1188202, Bkrcty.E.D.Pa (2007):

In enacting the Bankruptcy Code, Congress carefully balanced the rights of debtors and creditors. For example, while the automatic stay enjoins creditor action against the debtor and her property, it provides the creditor with adequate protection of its interest in property so that its position does not deteriorate while it is statutorily enjoined. **Moreover, it is generally accepted that the debtor’s burden to demonstrate that a reorganization is in process increases with the passage of time. Finally, because creditor’s rights are constrained during the pendency of Chapter 13 proceedings, the Bankruptcy Code contemplates that a plan will be promptly confirmed so that payments to creditors may commence.**

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On the other hand, and regarding to a Debtor's failure to continue making the direct payments to FirstBank Puerto Rico, courts have held that failure of debtors to make their current monthly payments directly to creditor "outside the plan" required the dismissal of their Chapter 13 case. *See, In re García*, 42 B.R. 33 (Bkrcty. D. Colo., 1984).

### III. ALLEGATIONS

6. As stated before, the proposed Chapter 13 Plan dated November 14, 2011, is not feasible inasmuch that debtor remains in post-petition arrears with FirstBank Puerto Rico. Thus, the proposed plan should not be approved.

7. Since the filing of this case debtor has been enjoying and depreciating movant's collateral without making any payment to this creditor nor providing for any adequate protection to FirstBank. Thus, debtor's conduct constitutes an unreasonable delay prejudicial to this creditor.

8. Here, there is sufficient cause for the dismissal of the case pursuant Section 1307 of the Bankruptcy Code.

9. On the basis of the aforesaid, FirstBank opposes the confirmation of the proposed plan dated November 1, 2012, and respectfully requests to the Honorable Court to enter an Order dismissing the case.

10. According to the enclosed certification, provided by the Department of Defense Manpower Data Center (DMDC), the debtor(s) is (are) not in active duty or under call to active duty as a member(s) of the Army, Navy, Navy or Air Forces of the United States of America; the National Guard; the Public Health Service or the NOAA. *See, Attachment B.*

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**WHEREFORE**, it is respectfully requested from the Honorable Court: (1) not to confirm the Chapter 13 Plan dated November 1, 2012; and (2) that an Order be entered dismissing the case for unreasonable delay and failure to make payments provided for in the plan.

In San Juan, Puerto Rico, this 8 day of January, 2012.

**NOTICE**

Within thirty (30) days after service as evidenced by the certification, and an additional three (3) days pursuant to Fed. R. Bank. P. 9006(f) if you were served by mail, any party against whom this motion has been served, or any other party to the action who objects to the relief sought herein, shall serve and file an objection or other appropriate response to this paper with the Clerk's office of the U.S. Bankruptcy Court for the District of Puerto Rico. If no objection or other response is filed within the time allowed herein, this motion will be deemed unopposed and may be granted unless: (i) the requested relief is forbidden by law; (2) the requested relief is against public policy; or (iii) in the opinion of the Court, the interest of justice requires otherwise.

Puerto Rico Local Bankruptcy Rule 9013-1(h)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY, that a copy of this motion is being sent by first class mail to the Debtor: **SUDGEILY ENID REYES NIEVES**, at the address on record: HC 72 BOX 3665, NARANJITO, PUERTO RICO 00719; and to the authorized addresses through/by the Bankruptcy CM/ECF System to: Debtor's counsel, **JUAN A. HERNANDEZ RIVERA**; and to **JOSE RAMON CARRION MORALES**, Chapter 13 Trustee and to the **US TRUSTEE**.

BY: **//s// MARISTELLA SANCHEZ RODRIGUEZ**

Maristella Sanchez Rodriguez, Esq.

Attorney for Movant- US 224714

**MARIA M. BENABE-RIVERA, ESQ.**

Attorney for Movant- US 208906

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Tel. (787) 729-8135, Fax (787) 729-8270

Email: [maristella.sanchez@firstbankpr.com](mailto:maristella.sanchez@firstbankpr.com)

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF PUERTO RICO

IN RE: <b>SUDGEILY E. REYES NIEVES</b>
DEBTOR (S)
FIRSTBANK PUERTO RICO
MOVANT
VS.
Respondent (S)

Case No. 12-08832  
Chapter: 13

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☒ of acts against property  
under 11 USC 362 (D) (2)

☐ of other acts under  
11 USC (D) (1) 1307

☐ of co-debtor stay under  
11 USC 1201 (c) (2) or  
1301 (c) (2)

Creditor: Firstbank

Account Number: XXXXX9938

**STATEMENT OF AMOUNT DUE INCLUDING A BREAKDOWN**

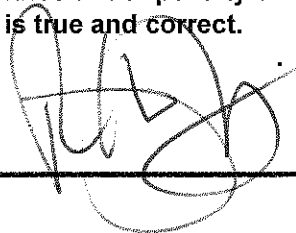
As of Date:

Per Diem Interest:

1. Principal Balance Due:	\$17,677.61
2. Interest Due	\$ 1,420.87
3. Late Charges Due:	\$ 178.60
4. Advance for: Taxes	
Other Charges	
5. Attorneys cost & fees	
6. Any other charge (Motion)	
7. Total	<u>\$19,277.08</u>

I, Rafael Kortright, Assistant Vice President Firstbank, declares under penalty of perjury of the laws of the United States that the foregoing is true and correct.

In San Juan, Puerto Rico this January 3, 2013.



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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF PUERTO RICO

SUDGEILY E. REYES NIEVES

DEBTOR (S)

FIRSTBANK PUERTO RICO  
MOVANT

VS.

RESPONDENT (S)

Case No. 12-08832

Chapter: 13

STATEMENT OF INSTALLMENTS DUE  
COST AND ATTORNEY'S FEES OWED ON PERSONAL LOANS  
CONDITIONAL SALES CONTRACT NUMBER:

XXXXX9938

As of January 3, 2013

A. PRE-PETITION

8 Monthly installments of \$ 359.00 Due \$2,872.00

8 Monthly installments of \$ 17.95 Due \$ 143.60

Total pre-petition installments and  
late charges due \$3,015.60

B. POST-PETITION

2 Monthly installments of \$ 359.00 Due \$718.00

2 Monthly installments of \$ 17.95 Due \$ 35.90

Total post-petition installments and  
late charges due \$753.90

C. ATTORNEYS FEES

**TOTAL INSTALLMENTS DUE, COST AND  
ATTORNEYS FEES OWED**



AMAI	01/02/13	ACCOUNT INQUIRY	15:18:34
CUR			
CTL2 001	CTL3 000	CTL4 0000	ACCT xxxxxxxxxxxx9938
CTL2 000	CTL3 000	CTL4 0000	CUST 00000001063955
		***** RATES *****	EFF DATE 01/02/13
PAYOFF	19277.08		PART NONACCRL
ORIG LOAN AMT	19248.00	CURR RATE 10.2500000	SIMPLE INT - FIXED RATE
ORIG PROCEEDS	16295.00	ORIG RATE 10.2500000	AUTO DR N
LT CHG DUE	178.60	PER DIEM 4.9642603	PROD TYPE ALSI
FEES DUE	0.00	***** DATES *****	PRIM OFFICER 696
CURRENT PRIN	17677.61	CONTRACT DATE 05/07/11	GL KEY 01001A02 0073 86
CURRENT INT	1420.87	CURR MATURITY 05/07/17	CALL CODE 06B0
SCH PYMT AMT	359.00	CLOSED DATE	***** REPAYMENTS *****
CUR PYMT AMT	376.95	SCHED DUE DATE 01/07/13	CURR TERM 72
PAST DUE AMT	3572.05	OLDEST DUE DATE 03/07/12	PYMTS MADE 9
PARTIAL PAID	17.95	LAST MAINT DT 11/09/12	PYMTS REM 63
*****		LST BAL CHG DT 03/21/12	MONTHS EXTD 0 REN 000
SUDGEILY E REYES-NIEVES			YTD INT COLL 0.00
HC 72 BOX 3662			INT COL PREV 541.03
			***** CREDIT HIST *****
		COLLATERAL	015 016 030 060 090 000
NARANJITO	PR 00719-8735	CODE: AUTO	002 004 003 001 007 000
PH ( 787 ) 372-7779		DESC: S/H.11/2/12	
PF3-ADDL INFO	PF6-ESCROW	PF10-REDISP	

Page: 1 Document Name: untitled

AMHS 01/02/13 HISTORY SUMMARY 15:18:39  
 CUR \*ACCT MSG\*  
 CTL2 001 CTL3 000 CTL4 0000 ACCT xxxxxxxxxxxx9938 REYES-NIEVES  
 START DATE 10/23/12

OPT: A=ACCRUED SINCE LAST TRAN, C=CAPTURE, R=REVERSAL, S=SPECIFIC

OPT	EFF DATE	TRAN DESCRIPTION	TRAN AMOUNT	POST BALANCE
	10/23/12	7011 FEE ASSESSMENT	17.95	17,677.61
	10/26/12	2273 COLL UPDT	FLD = DESC 1	
	10/26/12	2013 ACCT F/M UPDATE	FLD = MESSAGE CODE	NEW =
	10/26/12	2013 ACCT F/M UPDATE	MULTIPLE FIELDS	
	10/26/12	2013 ACCT F/M UPDATE	FLD = STOP DELQ NTC	NEW = N
	11/01/12	2273 COLL UPDT	FLD = SHORT DESC	
	11/08/12	2013 ACCT F/M UPDATE	FLD = MESSAGE CODE	NEW = BG
	11/09/12	2013 ACCT F/M UPDATE	FLD = MESSAGE CODE	NEW = Q2
	11/09/12	2013 ACCT F/M UPDATE	FLD = STOP ALL CORRESP	NEW = Y
	11/09/12	2013 ACCT F/M UPDATE	FLD = CLASS CODE	NEW =
	11/09/12	2013 ACCT F/M UPDATE	FLD = STOP DELQ NTC	NEW = Y
	11/09/12	2273 COLL UPDT	FLD = DESC 1	
	11/23/12	7011 FEE ASSESSMENT	17.95	17,677.61
	12/24/12	7011 FEE ASSESSMENT	17.95	17,677.61

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Department of Defense Manpower Data Center

SCRA 2.3



**Status Report  
Pursuant to Servicemembers Civil Relief Act**

Last Name: REYES NIEVES

First Name: SUDGEILY ENID

Middle Name:

Active Duty Status As Of: Jan-03-2013

On Active Duty On Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
This response reflects the individuals' active duty status based on the Active Duty Status Date			

Left Active Duty Within 367 Days of Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
This response reflects where the individual left active duty status within 367 days preceding the Active Duty Status Date			

The Member or His/Her Unit Was Notified of a Future Call-Up to Active Duty on Active Duty Status Date			
Order Notification Start Date	Order Notification End Date	Status	Service Component
NA	NA	No	NA
This response reflects whether the individual or his/her unit has received early notification to report for active duty			

Upon searching the data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the status of the individual on the active duty status date as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard). This status includes information on a Servicemember or his/her unit receiving notification of future orders to report for Active Duty.

*Mary M. Snavelly-Dixon*

Mary M. Snavelly-Dixon, Director  
Department of Defense - Manpower Data Center  
4800 Mark Center Drive, Suite 04E25  
Arlington, VA 22350

The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense (DoD) that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The DoD strongly supports the enforcement of the Servicemembers Civil Relief Act (50 USC App. § 501 et seq, as amended) (SCRA) (formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced only a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual was on active duty for the active duty status date, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's status by contacting that person's Service via the "defenselink.mil" URL: <http://www.defenselink.mil/faq/pis/PC09SLDR.html>. If you have evidence the person was on active duty for the active duty status date and you fail to obtain this additional Service verification, punitive provisions of the SCRA may be invoked against you. See 50 USC App. § 521(c).

This response reflects the following information: (1) The individual's Active Duty status on the Active Duty Status Date (2) Whether the individual left Active Duty status within 367 days preceding the Active Duty Status Date (3) Whether the individual or his/her unit received early notification to report for active duty on the Active Duty Status Date.

### More information on "Active Duty Status"

Active duty status as reported in this certificate is defined in accordance with 10 USC § 101(d) (1). Prior to 2010 only some of the active duty periods less than 30 consecutive days in length were available. In the case of a member of the National Guard, this includes service under a call to active service authorized by the President or the Secretary of Defense under 32 USC § 502(f) for purposes of responding to a national emergency declared by the President and supported by Federal funds. All Active Guard Reserve (AGR) members must be assigned against an authorized mobilization position in the unit they support. This includes Navy Training and Administration of the Reserves (TARs), Marine Corps Active Reserve (ARs) and Coast Guard Reserve Program Administrator (RPAs). Active Duty status also applies to a Uniformed Service member who is an active duty commissioned officer of the U.S. Public Health Service or the National Oceanic and Atmospheric Administration (NOAA Commissioned Corps).

### Coverage Under the SCRA is Broader in Some Cases

Coverage under the SCRA is broader in some cases and includes some categories of persons on active duty for purposes of the SCRA who would not be reported as on Active Duty under this certificate. SCRA protections are for Title 10 and Title 14 active duty records for all the Uniformed Services periods. Title 32 periods of Active Duty are not covered by SCRA, as defined in accordance with 10 USC § 101(d)(1).

Many times orders are amended to extend the period of active duty, which would extend SCRA protections. Persons seeking to rely on this website certification should check to make sure the orders on which SCRA protections are based have not been amended to extend the inclusive dates of service. Furthermore, some protections of the SCRA may extend to persons who have received orders to report for active duty or to be inducted, but who have not actually begun active duty or actually reported for induction. The Last Date on Active Duty entry is important because a number of protections of the SCRA extend beyond the last dates of active duty.

Those who could rely on this certificate are urged to seek qualified legal counsel to ensure that all rights guaranteed to Service members under the SCRA are protected.

WARNING: This certificate was provided based on a last name, SSN/date of birth, and active duty status date provided by the requester. Providing erroneous information will cause an erroneous certificate to be provided.

Certificate ID: QHT1P5CNCK